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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2008-164*

13 **FELICIA LYNETTE LYNCH**
14 **a.k.a. FELICIA FAKAYODE**
PO BOX 11129
Oakland, California 94611
Registered Nurse License No. 549537

A C C U S A T I O N

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
20 (Board), Department of Consumer Affairs.

21 2. On or about November 5, 1998, the Board issued Registered Nurse
22 License Number 549537 to Felicia Lynette Lynch, a.k.a. Felicia Fakayode (Respondent). The
23 license was in full force and effect at all times relevant to the charges brought herein; it will
24 expire on February 29, 2008, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

1 4. Code section 2750 provides, in pertinent part, that the Board may
2 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
3 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 5. Code section 2764 provides, in pertinent part, that the expiration of a
5 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
6 against the licensee or to render a decision imposing discipline on the license.

7 STATUTORY PROVISIONS

8 6. Code section 2761 states:

9 “The board may take disciplinary action against a certified or licensed nurse or
10 deny an application for a certificate or license for any of the following:

11 (a) Unprofessional conduct, which includes, but is not limited to, the following:

12 (1) Incompetence, or gross negligence in carrying out usual certified or licensed
13 nursing functions. . .”

14 7. California Code of Regulations, title 16, section 1442, states:

15 “As used in Section 2761 of the code, ‘gross negligence’ includes an extreme
16 departure from the standard of care which, under similar circumstances, would have ordinarily
17 been exercised by a competent registered nurse. Such an extreme departure means the repeated
18 failure to provide nursing care as required or failure to provide care or to exercise ordinary
19 precaution in a single situation which the nurse knew, or should have known, could have
20 jeopardized the client's health or life.”

21 8. California Code of Regulations, title 16, section 1443, states:

22 “As used in Section 2761 of the code, ‘incompetence’ means the lack of
23 possession of or the failure to exercise that degree of learning, skill, care and experience
24 ordinarily possessed and exercised by a competent registered nurse as described in Section
25 1443.5.”

26 9. California Code of Regulations, title 16, section 1443.5 states:

27 “A registered nurse shall be considered to be competent when he/she consistently
28 demonstrates the ability to transfer scientific knowledge from social, biological and physical

1 sciences in applying the nursing process, as follows:

2 (1) Formulates a nursing diagnosis through observation of the client's physical
3 condition and behavior, and through interpretation of information obtained from the client and
4 others, including the health team.

5 (2) Formulates a care plan, in collaboration with the client, which ensures that
6 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
7 protection, and for disease prevention and restorative measures.

8 (3) Performs skills essential to the kind of nursing action to be taken, explains the
9 health treatment to the client and family and teaches the client and family how to care for the
10 client's health needs.

11 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
12 subordinates and on the preparation and capability needed in the tasks to be delegated, and
13 effectively supervises nursing care being given by subordinates.

14 (5) Evaluates the effectiveness of the care plan through observation of the client's
15 physical condition and behavior, signs and symptoms of illness, and reactions to treatment and
16 through communication with the client and health team members, and modifies the plan as
17 needed.

18 (6) Acts as the client's advocate, as circumstances require, by initiating action to
19 improve health care or to change decisions or activities which are against the interests or wishes
20 of the client, and by giving the client the opportunity to make informed decisions about health
21 care before it is provided."

22 COST RECOVERY

23 10. Code section 125.3 provides, in pertinent part, that the Board may request
24 the administrative law judge to direct a licentiate found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence and/or Incompetence)

3 11. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a)(1), for gross negligence and/or incompetence. The circumstances are as follows:

5 12. During early 1999, Respondent worked as a Registered Nurse at Excell
6 Health Care Center, a nursing home in Oakland, California. Her responsibilities included
7 nursing care of Patient A,^{1/} who had been admitted to the nursing home in November 1998 with a
8 diagnosis including COPD (Chronic Obstructive Pulmonary Disease), Congestive Heart Failure,
9 Atrial Fibrillation, Dementia and Dysphasia. Patient A was fitted with a gastric feeding tube. He
10 was entirely dependent on the tube for his medications and nourishment.

11 13. On or about January 16, 1999, Patient A's gastric tube was dislodged; it
12 was not re-inserted until or about January 29, 1999. During the intervening 13 days, Patient A
13 went without food or medicine. Respondent was among several registered nurses responsible for
14 Patient A's nursing care between about January 16 and January 29, 1999. Respondent failed to
15 draw attention to Patient A's condition, failed to advocate for replacement of his gastric tube, and
16 failed to document withholding administration of medication or nourishment from Patient A.^{2/}

17 SECOND CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct)

19 14. Respondent is subject to disciplinary action under Code section 2761,
20 subdivision (a), for unprofessional conduct as described in paragraphs 12 and 13, above.

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26 1. Patient A's identity is withheld to protect his privacy. His name will be disclosed in
27 discovery, upon request.

28 2. On January 31, 1999, Patient A was transferred in failing health to Summit Medical
Center, a nearby hospital, where he died later the same day.

1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 549537, issued
5 to Felicia Lynette Lynch, a.k.a. Felicia Fakayode;

6 2. Ordering Felicia Lynette Lynch, a.k.a. Felicia Fakayode, to pay the Board
7 of Registered Nursing the reasonable costs of the investigation and enforcement of this case,
8 pursuant to Business and Professions Code section 125.3; and,

9 3. Taking such other and further action as deemed necessary and proper.
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11 DATED: 11/14/02
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13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant
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